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9 **BEFORE THE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. VN-2005-1002

14 TIFFANY LUTKA,
a.k.a. TIFFANY ANN LUTKA
1006 Country Glen Way
Anaheim, CA 92805

A C C U S A T I O N

15 Vocational Nurse License No. VN 191392

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this
21 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
22 Nursing and Psychiatric Technicians ("Bureau"), Department of Consumer Affairs.

23 2. On or about April 18, 2000, the Board issued Vocational Nurse License
24 Number VN 191392 to Tiffany Lutka, also known as Tiffany Ann Lutka ("Respondent").
25 Respondent's vocational nurse license expired on July 31, 2005.

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1 8. Code section 2878 states, in pertinent part:

2 The Board may suspend or revoke a license issued under this chapter [the
3 Vocational Nursing Practice Act (Bus. & Prof. Code § 2840, et seq.)) for any of
4 the following:

5 (a) Unprofessional conduct. . .

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7 (f) Conviction of a crime substantially related to the qualifications,
8 functions, and duties of a licensed vocational nurse, in which event the record of
9 the conviction shall be conclusive evidence of the conviction. . .

10 9. Code section 2878.5 states, in pertinent part:

11 In addition to other acts constituting unprofessional conduct within the
12 meaning of this chapter, it is unprofessional conduct for a person licensed under
13 this chapter to do any of the following:

14 (a) Obtain or possess in violation of law, or prescribe, or except as directed
15 by a licensed physician and surgeon, dentist or podiatrist administer to himself or
16 herself or furnish or administer to another, any controlled substance as defined in
17 Division 10 of the Health and Safety Code, or any dangerous drug as defined in
18 Section 4022.

19 (b) Use any controlled substance as defined in Division 10 of the Health
20 and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic
21 beverages, to an extent or in a manner dangerous or injurious to himself or herself,
22 any other person, or the public, or to the extent that such use impairs his or her
23 ability to conduct with safety to the public the practice authorized by his or her
24 license. . .

25 10. Code section 4060 states:

26 No person shall possess any controlled substance, except that furnished to
27 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
28 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
29 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
30 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
31 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
32 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
33 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
34 This section shall not apply to the possession of any controlled substance by a
35 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
36 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
37 practitioner, or physician assistant, when in stock in containers correctly
38 labeled with the name and address of the supplier or producer.

39 Nothing in this section authorizes a certified nurse-midwife, a nurse
40 practitioner, a physician assistant, or a naturopathic doctor, to order his or
41 her own stock of dangerous drugs and devices.

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1 11. California Code of Regulations, title 16, section 2521 provides,
2 in pertinent part:

3 For the purposes of denial, suspension, or revocation of a license pursuant
4 to Division 1.5 (commencing with section 475) of the Business and Professions
5 Code, a crime or act shall be considered to be substantially related to the
6 qualifications, functions or duties of a licensed vocational nurse if to a
7 substantial degree it evidences present or potential unfitness of a licensed
8 vocational nurse to perform the functions authorized by his license in a
9 manner consistent with the public health, safety, or welfare. Such crimes
10 shall include but not be limited to those involving the following:

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12 (c) Violating or attempting to violate, directly or indirectly,
13 or assisting in or abetting the violation of, or conspiring to violate
14 any provision or term of Chapter 6.5, Division 2 of the Business and
15 Professions Code.

16 (f) Any crime or act involving the sale, gift, administration,
17 or furnishing of "narcotics or dangerous drugs or dangerous devices" as
18 defined in Section 4022 of the Business and Professions Code.

19 12. California Code of Regulations, title 16, section 2522.5, provides, in
20 pertinent part:

21 "(a) When considering the suspension or revocation of a license on the ground
22 that a licensed vocational nurse has been convicted of a crime, the Board, in evaluating the
23 rehabilitation of such person and his eligibility for a license will consider the following criteria:

24 "(1) Nature and severity of the act(s) or offense(s).

25 "(2) The total criminal record.

26 "(3) the time that has elapsed since commission of the act(s) or offense(s).

27 "(4) Whether the licensee has complied with any terms of parole, probation,
28 restitution, or any other sanctions lawfully imposed against the licensee.

“(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

"(6) Evidence, if any, of rehabilitation submitted by the licensee.

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COST RECOVERY

13. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

14. **"Hydrocodone"** is a Schedule II controlled substance as designated by Health and Safety ("H&S") Code section 11055, subdivision (b)(1)(J).

15. "Methamphetamine" is a Schedule II controlled substance as designated by H&S Code section 11055, subdivision (d)(2).

16. **"Soma,"** a brand of Carisoprodol, is a dangerous drug within the meaning of Code section 4022 in that it requires a prescription under federal law.

17. **"Vacation"** is a compound consisting of 5 mg hydrocodone bitartrate, also known as dihydrocodeinone, and 500 mg acetaminophen per tablet, and is a Schedule III controlled substance as designated by H&S Code section 11056, subdivision (e)(4).

18. "Xanax," a brand of alprazolam, is a Schedule IV controlled substance as defined in H&S Code section 11057, subdivision (d)(1).

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Crime Substantially Related)**
3 **(June 2006 - Possession of a Controlled Substance - Methamphetamine)**

4 19. Respondent is subject to disciplinary action pursuant to Code sections
5 490/2878, subdivision (f), and California Code of Regulations, title 16, section 2521(c) and (f),
6 in that on June 27, 2006, in the criminal proceeding titled People v. Tiffany Ann Lutka, Santa
7 Barbara County Superior Court, Case No. 1189829, Respondent was convicted by the Court on
8 her plea of guilty of violating Health and Safety Code section 11377(a) (Possession of Controlled
9 Substances - Methamphetamine), a felony, and Vehicle Code section 14601.1(a) (Driving When
10 Privilege Suspended or Revoked), a misdemeanor. The circumstances are as follows:

11 a. On November 19, 2005, the California Highway Patrol responded to a
12 report of a hit and run collision. Respondent fled the scene and was found by CHP officers
13 hiding inside the painting chamber in an auto body shop close to the collision sight. Witnesses to
14 the collision positively identified the Respondent. When officers made contact with the
15 Respondent, the Respondent displayed signs of being under the influence of a drug or intoxicant.
16 Officers conducted a field sobriety test and obtained a blood sample from the Respondent. The
17 test results came back positive for controlled substances. Officers also found Respondent to be
18 in possession of Methamphetamine and Soma, controlled substances, without a valid
19 prescription.

20 b. As a result of the above conviction, Respondent was sentenced by the
21 court to serve 365 days in county jail. Said sentence was suspended for three years with
22 probationary terms and conditions that included driving to and from work only for the first 90
23 days, obey all laws, not possess or use drugs or narcotics without a prescription, and submit to
24 search and seizure. Respondent was ordered to pay \$1,600 in fines.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Conviction of a Crime Substantially Related)**
3 **(May 2006 - Possession of Controlled Substances - Hydrocodone, Vacation, Xanax)**

4 20. Respondent is subject to disciplinary action pursuant to Code sections
5 490/2878, subdivision (f), and California Code of Regulations, title 16, section 2521(c) and (f),
6 in that on May 9, 2006, in the criminal proceeding entitled *People v. Tiffany Ann Lutka*, Orange
7 County Superior Court, West Justice Center, Case No. No. 06WF1276 F A, Respondent was
8 convicted by the Court on her plea of guilty of violating Health and Safety Code section 11350
9 (Possession of Controlled Substances - Hydrocodone, Vicodin and Xanax), a felony. The
10 circumstances are as follows:

11 a. On May 5, 2006, Garden Grove Police Officers, while working uniform
12 patrol for the Gang Suppression Unit, observed a black 2003 Mercedes illegally double parked.
13 Officers noticed that the vehicle was occupied by two females, later identified as Respondent and
14 her mother. Officers also observed two male subjects standing next to the open driver's side
15 door. When officers made contact with all subjects, officers determined that the two male
16 subjects were either on parole or probation, subject to search and seizure laws. A search of
17 Respondent's car revealed a plastic baggie containing approximately 64 prescription drugs for
18 which Respondent did not have a prescription. Found were nine (9) Hydrocodone pills, fifty
19 (50) Xanax pills, and four (4) Oxycodone pills. Respondent was booked for violation of Health
20 and Safety Code sections 11350 (possession of controlled substance(s)), and 11351 (possession
21 or purchase for sale of controlled substance(s)).

22 b. As a result of the above conviction, Respondent was sentenced to three (3)
23 years formal probation, said probation to include DNA testing, no unauthorized drugs without a
24 doctor's prescription, search and seizure, seek training/schooling/employment, no association
25 with drug users, and to maintain residence as approved by probation department. Respondent
26 was also ordered to complete a PC 1210 drug treatment program, ordered to pay \$270 in fines
27 and fees, and to register as a drug offender per Health and Safety Code section 11590.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**
3 **(Use of a Controlled Substance to an Extent or in a Manner**
4 **Dangerous or Injurious to Oneself or Others)**

5 21. Respondent is subject to disciplinary action pursuant to Code section
6 2878, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
7 2878.5, subdivision (b), in that on or about November 19, 2005, while licensed as a vocational
8 nurse, Respondent used the controlled substance methamphetamine to an extent or in a manner
9 dangerous or injurious to herself and/or others. On November 19, 2005, Respondent caused a
10 motor vehicle accident while under the influence of methamphetamine, as further set forth in
11 subparagraph 18, above.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct)**
14 **(Possession and Self Administration of**
15 **Controlled Substances and/or Dangerous Drugs)**

16 22. Respondent is subject to disciplinary action pursuant to Code section
17 2878, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
18 2878.5, subdivision (a), as follows:

19 a. On November 19, 2005, Respondent possessed the controlled substance
20 methamphetamine and the dangerous drug Soma without a valid prescription from a physician,
21 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section
22 4060. On said date, Officers of the Santa Barbara Police Department found Respondent in
23 possession of approximately 0.1 grams of the controlled substance methamphetamine and
24 unknown quantities of the dangerous drug Soma during a search of her purse following an
25 automobile accident, as further set forth in paragraph 13 and subparagraph 14(c).

26 b. On May 5, 2006, Respondent possessed unknown quantities of the
27 controlled substances Hydrocodone, Vicodin, and Xanax without a valid prescription from a
28 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of
Code section 4060, as further set forth in paragraph 14 above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct)
3 (November 2005 Arrest - Driving Motor Vehicle Under Influence of Alcohol and/or Drugs)

4 23. Respondent is subject to disciplinary action under Code section 2878(a) in
5 that on November 19, 2005, Respondent was arrested for driving a motor vehicle under the
6 influence or alcohol and/or drugs, after a hit and run traffic collision.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Bureau of Vocational Nursing and Psychiatric
10 Technicians issue a decision:

11 1. Revoking or suspending Vocational Nurse License Number VN 191392,
12 issued to Tiffany Lutka, also known as Tiffany Ann Lutka;

13 2. Ordering Tiffany Lutka, also known as Tiffany Ann Lutka, to pay the
14 Bureau of Vocational Nursing and Psychiatric Technicians the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3; and

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: August 22, 2008

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21 TERESA BELLO-JONES, J.D., M.S.N., R.N.
22 Executive Officer
23 Bureau of Vocational Nursing and Psychiatric Technicians
24 Department of Consumer Affairs
25 State of California
26 Complainant
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